STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 22nd Floor
San Francisco, California 94105

FINAL STATEMENT OF REASONS

Date: August 15, 2002 **RH02020999**

AMENDMENTS TO REGULATIONS CONCERNING RATE HEARING PROCEDURES AND CASE SETTLEMENTS

INTRODUCTION

Pursuant to Insurance Code sections 1861.055 and 10089.11 (the "Statutes"), Insurance Commissioner Harry Low proposes to amend California Code of Regulations, Title 10, Chapter 5, Subchapter 4.8, Articles 6, and 8, and Subchapter 4.9 as well as Title 10, California Code of Regulations, Chapter 5, Subchapter 7.7. The proposed amendments to regulations conform the regulations to the practice in rate hearings and bureau name changes within the Department of Insurance, make rule changes mandated by case law, clarify that a proposed decision is due 30 days from the close of the record and clarify requirements for settlement submissions. The Statutes require that the Commissioner adopt regulations to govern hearing procedure for rate changes for Proposition 103 lines of insurance, including earthquake insurance.

The Commissioner believes that the proposed regulation amendments are necessary to bring the regulations into conformity with case law, the Insurance Code, rate hearing practice, principles of fairness and bureau name changes within the Department of Insurance. Each change is identified and discussed below.

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF REGULATION

The specific purpose of each amendment and the rationale for the Commissioner's determination that each amendment is reasonably necessary to carry out the purpose for which it is proposed are set forth below. Overall, conforming the existing regulations to actual practice is reasonably necessary in order to carry out the intent of the Legislature that the regulations govern hearings (§1861.055) and specify procedures for ratemaking (§10089.11). Certain practices have been followed in rate hearings in place of those procedures set forth in the regulations because the procedures in the regulations do not work well. These improvised practices should be made part of the written regulations. The provision of this information is reasonably necessary for purposes of clarity and ease of reference.

§2646.2 subdivision (d) is modified to delete a subdivision that allows the Commissioner to give directions on a matter pending before an administrative law judge even when such direction has not been requested. This deletion is reasonably necessary in response to the reasoning in *Fireman's Fund Insurance Cos. v. Quackenbush (1997) 52 Cal. App.4th 599*, in which the court held that the Insurance Commissioner had exceeded his authority when he ordered an administrative law judge to reconsider an interim evidentiary ruling in a Proposition 103 rate reduction hearing.

§2648.4 subdivision (b) is modified to clarify that the Commissioner can request whatever documents are needed to perform a complete analysis of an application. This modification is reasonably necessary to enable the Commissioner to make a determination without going to hearing and engaging in lengthy discovery.

§§2651.1 subdivisions (a)(e) and (g), 2652.5, 2655.1 subdivision (g)(changed to (h)), 2659.1, and 2661.3 subdivisions (e) and (g) are modified to change "Administrative Law Bureau" to "Administrative Hearing Bureau." These changes are reasonably necessary to avoid confusion since there is no longer an Administrative Law Bureau in the Department of Insurance.

§2651.1 subdivision (e) is modified to clarify that authorization by the administrative law judge is necessary before pleadings can be filed by facsimile or electronic transmission. Subdivision (i) is modified to clarify that the parties can decide amongst themselves whether to allow service by facsimile or electronic transmission. These changes are reasonably necessary to aid litigants in ascertaining the rules for filing and service and to prevent facsimile transmission of large documents without authorization.

§ 2655.1 is reorganized for clarity, in addition to substantive modifications. Subdivision (a) is modified to allow discovery requests to be served along with each party's initial pleading, allow alternatives to traditional written discovery, and compress the timeframes between actions during the discovery phase of the case. New subdivision (b) is reworded for clarity and provides for a confidentiality agreement. New subdivision (c) also shortens the timeframe for a meet and confer on a discovery dispute. New subdivision (e) explicitly affords the administrative law judge the ability to extend the shortened timeframes for discovery if necessary. These changes are reasonably necessary to speed the pre-adjudicative phase of the case so that the statutory timeframe for hearing commencement can be met.

§2655.6 subdivision (a) is modified to require submission of applicant's direct prepared testimony earlier and other parties' testimony later than the existing regulation. These changes are reasonably necessary to afford time for submission of and rulings on motions to strike the applicant's direct prior to the submission of other parties' testimony. Additionally, subdivision (a) is modified to require that an expert's prepared direct testimony be accompanied by the expert's curriculum vitae and list of publications. This change is reasonably necessary to eliminate the time spent in requesting and receiving these documents. Subdivision (b) is modified to shorten the time for filing a motion to

strike. It is reasonably necessary so that the motion can be ruled upon before other parties' testimony is due. A new subdivision (c) is added to codify the practice that if rebuttal prepared testimony is allowed, motions to strike may be made orally and ruled upon from the bench. This procedure is reasonably necessary to ensure that the statutory timeframe for commencement of the hearing is met. The ensuing subdivisions are relettered to follow (c).

§2655.5 subdivision (a) is modified to clarify that the administrative law judge can request additional evidence until the record is closed and that all parties must have an opportunity to see the additional evidence. It is reasonably necessary to extend the deadline for submission of additional evidence ordered by the ALJ because the record has often been augmented both before and after oral argument. A new subdivision (c) is added to provide the parties with an opportunity to object to the ALJ-ordered evidence. This addition is reasonably necessary to allow the parties to protect their record. Relettered subdivision (d) eliminates the need for a written motion showing good cause before an ALJ can order additional evidence after the close of the evidentiary hearing. In other words, the ALJ can order additional evidence on her own motion, but additional evidence cannot just be produced by the parties. This change is reasonably necessary to clarify that only the ALJ has the ability to bring evidence into the record after the evidentiary hearing. Relettered subdivision (e) is modified so that the record closes 15 days after oral argument, rather than 15 days after reply briefs. This change is reasonably necessary to afford sufficient time for scheduling oral argument and preparing questions therefor, the admission of additional evidence by the ALJ, and rulings on official notice.

§2655.10 is modified to require requests for official notice earlier in the process so that there is time to get objections and refutations before oral argument. This change is reasonably necessary to afford sufficient time for a party to refute, as provided for in the Administrative Procedure Act, and for the administrative law judge to consider the refutation before ruling.

§2656.1 subdivision (a) is modified by dividing it into two subdivisions. The new subdivision (b) is modified to provide for notice to intervenors of any stipulation or settlement. This change is reasonably necessary to afford a meaningful opportunity to object to the settlement or stipulation. Current subdivision (b) is relettered to (c) and modified to require declarations in support of the stipulation or settlement if there is no admitted evidence in the record. This modification is reasonably necessary to ensure that the administrative law judge has the evidence in the record to make a decision regarding acceptance or rejection of a settlement. The ensuing subdivisions are relettered seriatim. Current subdivision (f) relettered to (g) is modified to clarify that both a stipulation and a settlement are subject to a hearing upon objection. These changes are reasonably necessary to protect the public interest. They ensure that intervenors or potential intervenors have notice and an opportunity to object to and have a hearing on dispositive stipulations as well as settlements.

§2656.2 is modified to eliminate subdivision (b) because the placement of the subdivision is confusing since the section concerns *rejection* of a stipulation or settlement but subdivision (b) concerns the *adoption* of a stipulation or settlement. Concurrently, §2656.3, concerning adoption of a settlement or stipulation is modified to have two subdivisions, its new subdivision (b) is the one eliminated from the previous section. These modifications are reasonably necessary for clarity and to prevent confusion.

§2656.4 subdivision (c) is modified in light of case law to delete the absolute prohibition on discovery or admissibility of information regarding approval of another insurer's application. This change is reasonably necessary in light of the holding in *RLI Insurance Co. Group v. Superior Court (1996) 51 Cal.App.4th 415.*

§2657.2 is modified to provide a time limit within which oral argument can be scheduled. This change is reasonably necessary so that the administrative law judge is not able to keep the record open indefinitely.

§2658.1 is modified for two primary reasons. First, it equates "submission" with "when the record closes" to conform all the regulations with Insurance Code § 1861.055(d), which prevails over Government Code § 11517(c) in determining when the 30 days begins within which an ALJ's proposed decision must issue. At present, Government Code §11517(c) allows the ALJ 30 days after submission to prepare a proposed decision, while Insurance Code § 1861.055(d) provides the ALJ shall render a decision 30 days after the closing of the record. Second, by equating the two moments in the case, it allows the ALJ to receive any additional evidence ordered at oral argument and objections thereto for 15 additional days and to be sure that no additional evidence is needed. This change is reasonably necessary not only to allow for admission of evidence after oral argument, but also to clarify the deadline for the ALJ's decision.

§2659.1, in addition to the name change previously noted, is modified in its title only, for clarity, to indicate that it concerns Petitions for Reconsideration.

A new Article is inserted, as Article 12, Judicial Review.

A new §2660 is added to require service on the Administrative Hearing Bureau of any petition for review of the Commissioner's final decision and any final decision from a reviewing court. This change is reasonably necessary to ensure that the AHB is aware of later reversals of Commissioner decisions. Since AHB is organizationally separate from the Department of Insurance Legal branch, it is not aware of these actions unless explicitly advised.

Current Article 12 is renumbered to Article 13 and current Article 13 is renumbered to Article 14. These changes are reasonably necessary in light of the insertion of a new Article 12.

§2697.3 concerns rate proceedings for the California Earthquake Authority. §2697.3 subdivision (d)(3) is modified to conform CEA's rate procedure to the changes set forth above regarding when a rate would be deemed approved. Rather than 100 days after the date the case is submitted, the rate would be deemed approved 100 days after the record is closed. This change is reasonably necessary to give the ALJ her full 30 days after all the argument and evidence is in and the Commissioner an additional 70 days to consider the proposed decision. This section's subdivision (f) makes explicit in the ratemaking context, Insurance Code §10089.11 subdivision (d)'s proprietary materials exception to public availability of documents. This change is reasonably necessary for clarity and consistency with the Insurance Code.

IDENTIFICATION OF STUDIES

There are no specific studies relied upon in the adoption of these amendments.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the regulations are proposed. Performance standards were considered but were rejected as an unreasonable and impracticable alternative because the enabling statute (Ins. Code §1861.055) requires regulations delineating procedures and timelines for scheduling and commencing hearings.

ECONOMIC IMPACT ON SMALL BUSINESS

The Commissioner has identified no reasonable alternatives to the presently proposed regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department, that would lessen any impact on small business. Although performance standards were considered as an alternative, they were rejected because these are required regulations that seek to detail specific procedures for conducting rate hearings.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Commissioner has made a determination that the proposed amendments to and adoption of regulations do not impose a mandate on local agencies or school districts. The regulations have nothing to do with local agencies or school districts; they neither require nor prohibit action on the part of these entities.

PRENOTICE DISCUSSIONS

The Commissioner has conducted prenotice public discussions pursuant to Government Code Section 11346.45(a). This discussion was noticed January 18, 2002 and took place February 13, 2002. Representatives of the Department of Insurance, insurers, CEA and law firms were present. Additionally, consumer representatives submitted written comments, as did some other insurer representatives. The discussion and comments have been carefully considered in drafting the proposed amendments to the regulations.

PUBLIC HEARINGS & POST-NOTICE COMMENTS

Public hearings on these proposed amendments were held in San Francisco on July 11, 2002 and Los Angeles on July 12, 2002. Responses to the written and oral comments are attached. In response to some comments, some revisions were made; they are set forth in the responses.

NOTICE OF AVAILABILITY OF REVISED TEXT & NOTICE OF ADDITION TO RULEMAKING FILE OF NEW MATERIAL

These notices and the revised text were sent out on July 24, 2002 and remained available to the public through August 14, 2002. No further comment on the revised text was received. The notice also included the new material being added to the rulemaking file, i.e., the Legislative Counsel's Digest prepared in connection with the legislation that produced Insurance Code §1861.055 (Stats. 1990, c. 1583 (A.B. 3014, Lancaster)) (1990 Cal. Legis. Serv. 1583 (West)). No further comment on the additional material was received.

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Summary and Response to Comments in RH02020999

Comment #1 from Heller Ehrman:

There is an error in the Notice, in footnote 1 and on page 5 and in the Initial Statement of Reasons at page 2. References to § 2642.2 are in error. Those references should be to § 2646.2.

Response: This comment is correct. Only §2646.2 is being revised.

Comment #2 from Barger & Wolen on behalf of 21st Century:

The thrust of this comment is that various amendments will lead to delay in finishing the case, particularly those amendments that equate "when the record is closed" to "when the case is submitted." Among other objections, the commentator believes that this is not consistent with the Administrative Procedure Act (Gov't. Code §§ 11500-11529), specifically § 11517 which states that the ALJ's proposed decision should be prepared within 30 days "after the case is submitted."

Response: The amendments were aimed at the frank inconsistency of two statutory provisions – Gov't. Code § 11517(c) and Insurance Code § 1861.055(d) -- as well as dealing with compressed timeframes for oral argument and official notice. Insurance Code § 1861.055(d) provides that the ALJ's proposed decision shall be rendered within 30 days of *closing* the proceeding. Gov't Code § 11517 has a precatory instruction1 to the ALJ to prepare a proposed decision 30 days after the case is *submitted.* The more specific Insurance Code § 1861.055(d) overrides the less specific Government Code section. Rules of statutory construction teach that the more specific section, (here, the one that is specifically about insurance rate hearings rather than about all administrative hearings) prevails. In order to clarify the timeframe that will be followed, the regulations use the Insurance Code's "close of proceeding" language, not time of submission. Moreover, Gov't Code § 11517 only applies by virtue of Insurance Code §1861.08, and the Legislature must be assumed to have known it was adopting a different standard when it enacted Insurance Code § 1861.055(d) at a later date.

1 The section explicitly states that if the decision is late it does not prejudice the agency.

21st Century's citation to Hassanally v. Firestone is not apt. That case concerns judges in courts of record and 90 days to decide a case after trial before pay is withheld temporarily. In contrast, at stake in this administrative situation with a 30 day timeframe is the possibility that a rate will be deemed approved if no decision issues that can be acted upon by the Commissioner.

Finally, the various amendments both shorten some timeframes and lengthen others. The cases will not be delayed substantially by the overall impact of the changes.

(a) Specifically, as to the amendment of Title 10, California Code of Regulations,
§ 2655.5(a), 21st Century notes that the current regulation only allows additional evidence until the filing of reply briefs, whereas the amendment would allow the ALJ to request additional evidence until the record is closed. 21st Century objects that this extension of time would, by virtue of unchanged subsection (b) and new subsection (c), delay the closing of the record 15 days, which would not be consistent with Gov't. Code § 11517.

Response: The amendment is consistent with Insurance Code § 1861.055(d), the statute that it needs to be consistent with, and is necessary in light of the real-world experience in these cases. These rate cases have usually needed late-filed evidence, including exhibits drawn up after oral argument, and all parties usually welcome this evidence into the record. Use of "submission" in its California Rule of Court, Rule 22.5 meaning would not allow this material to be in the record. It is notable that that rule is for appellate courts, not for the trial courts that are more analogous to AHB proceedings.

(b) Specifically, as to the amendment of Title 10, California Code of Regulations,
§ 2655.5(e), which provides that "in no event shall the record close more than 15 days after oral argument," 21st Century notes that the deadline appears to be illusory because there is no regulation indicating when oral argument must occur.

Response: Currently the timing of oral argument is controlled by the regulation that provides that the record closes 15 days after the filing of reply briefs. To have the argument within the record, it must occur within those 15 days. In the proposed amendment, the time of closing is extended until after oral argument. Thus, while there is a limit on how long the record can remain open after oral argument, there is no deadline in which to schedule oral argument. The commentator is correct that this should be remedied.

§ 2657.2 will be amended from its current form to read:

"When, after the close of the evidentiary hearing and the filing of post-hearing briefs, the administrative law judge believes that the complexity or importance of the issues so warrant, the administrative law judge may require or permit the presentation of oral argument within 25 days after the filing of reply briefs. At least ten (10) days prior to the date set for oral argument, the administrative law judge shall serve a list of questions and/or issues which shall be addressed at the oral argument."

21st Century may believe that such an extension is in conflict with the provisions in the Insurance Code that deem a rate application approved 180 days after receipt, but under Insurance Code §1861.05(c) and (d), once a hearing has commenced, that time is extended to 60 days after the record is closed (§1861.05(d) (1)) or 100 days after the case is submitted (1861.05(d) (3)). (The distinction between these subsections may also indicate that the legislature envisioned that the record would close at a later time than the case might normally be submitted.)

(c) Specifically, as to the amendment of Title 10, California Code of Regulations **§ 2658.1**, which provides that "[a] proceeding shall stand submitted when the record closes," 21st Century contends that the change from "submitted after the taking of evidence, the filing of briefs, and the presentation of any oral argument" is inconsistent with Government Code §11517(c) and beyond the authority of the Commissioner.

Response: As discussed above, authority for this amendment proceeds from Insurance Code § 1861.055(d). The commentator provides no support for ignoring this statute and only relying on the Government Code. This and other amendments clarify that timeframes shall run from the closing of the proceeding as opposed to submission and thus eliminate confusion. It is the inconsistent statutes that require this melding of two moments in a case that are not otherwise synonymous.

(d) Specifically, as to the amendment of Title 10, California Code of Regulations,
§ 2659, which provides for a limit on the amount of time the Commissioner can take to act on a proposed decision, 21st Century finds it unobjectionable to the extent that it tracks Government Code § 11517(c)(2), but finds the provision making the proposed decision a public record after 30 days confusing and inconsistent with Government Code § 11517(d). It also finds the title confusing in its continued reference to Petitions for Reconsideration.

Response: For reasons discussed in response to a comment below, this section is being withdrawn. Concomitantly, the proposed change in the title of Article

11, which was being made to clarify that a rule concerning the Commissioner's decision was being included in the article with rules on Petitions for Reconsideration, will not be made.

Comment #3 from Lord, Bissell and Brook on behalf of the National Association of Independent Insurers (NAII):

This commentator generally notes the tension between the intent of the statutory scheme to provide an expeditious decision on a rate filing and the need for time to develop a complex case that may require extensive discovery and have multiple parties.

(a) Specifically, as to § **2651.1(e)**, which provides that a specific pleading may be filed and/or served by facsimile or electronic transmission only when authorized by the ALJ, the commentator would prefer that the authorization is only needed for filing, so that the parties can agree between themselves on the service method and any page limitation.

Response: This change is agreeable and will be made as follows (amendments to amended text indicated).

(e)"Filing" means the act of delivery of a paper pleading to the Administrative Hearing Bureau. An original and four copies of each pleading shall be filed with the Administrative Hearing Bureau. A specific pleading may be filed ~~and/or served~~ by facsimile or electronic transmission only when authorized by the administrative law judge.

(i) "Service" means to provide a copy of a pleading to every other party in the proceeding in conformity with California Code of Civil Procedure sections 1011 and 1013. When a party files a pleading, the party shall concurrently serve
that pleading on all other parties in the proceeding.

All filed pleadings shall be accompanied by an original declaration of service in conformity with California Code of Civil Procedure sections 1011 and
1013. All served pleadings shall be accompanied by a copy of the declaration of
service. An employee of a party may sign a declaration of service.

A specific pleading may be served by facsimile or electronic transmission when authorized by the receiving party.

A sample declaration of service form can be found in section 2623.9.

(b) Specifically, as to new **§ 2655.1(a)**, which provides for 10 calendar days in which to respond to discovery, the commentator notes that if the Department propounds discovery with its Notice of Hearing, the insurer will have to respond to discovery before it has to file a Notice of Defense. Second, the section is drafted so that it appears that only the insurer has a continuing duty to produce additional items as they become relevant. Finally, the last sentence, the commentator believes, makes it appear that only the insurer must produce a written response to discovery requests.

Response: The commentator raises valid points. In conjunction with the responses to the points subsequently raised, § 2655.1 (a) will be revised as indicated below. (amendments to original text indicated).

§2655.1. Discovery

(a) The Department may include a discovery request with a notice of hearing. If it does so within twenty (20) days following the service of a discovery request, the insurer shall deliver to the Department and any interveners copies of all items requested that meet the standards of discoverable items in Government Code section 11507.6, liberally construed. The insurer and any intervener may also request discovery concurrently with the filing and service of each party's initial pleading. ~~A~~ The written response to any discovery request other than a discovery request served with the Notice of Hearing shall be served on the requesting party within ~~twenty (20)~~ ten (10) days of service of the discovery request. Upon mutual agreement of all parties and interveners: 1) written documents may be converted into another mutually agreeable format, such as electronic or magnetic, and made readily available, or 2) a depository of original items may be used in place of delivery of copies, but the depository shall be open beyond regular business hours upon request of a party or intervener. The parties shall have an ongoing duty to produce additional items pursuant to whichever method is agreed upon as new items become relevant.

(c) Specifically, as to new **§ 2655.1(b)**, which provides that a response to discovery must identify items not produced that are responsive to the request, the commentator contends that the requirement is burdensome, although noting that it is not a new requirement.

Response: While identifying each and every document that is responsive to a request, even when the producer claims the documents are not relevant or are otherwise not subject to discovery, is a large task, it remains necessary in order to allow the requesting party to make a meaningful argument in response to the producer's objections to production and to allow the ALJ to rule on the dispute. It is not a new requirement (see current §2655.1(a)) and will be retained.

(d) Specifically, as to new **§ 2655.1(e)**, which provides that the ALJ can extend the time for discovery "when the interests of justice so require," the commentator wonders whether the liberal standard might be abused and whether it is consistent with other standards for continuances and extensions found in Insurance Code § 1861.05(c)(3)(B) and Government Code § 11524.

Response: At the workshop on these regulations, and indeed, in the commentator's general comments, the point is made that these cases are often complex and discovery is often an extended process due to that complexity. Accordingly, discretion to extend the timeframes is crucial to affording a real opportunity to litigate the case on its merits. While the regulation does not use the phrase "extraordinary circumstances" as used in Insurance Code §1861.05(c)(3)(B), that phrase is defined within the subsection as including a continuance granted pursuant to Government Code § 11524 on a case-by-case basis. Government Code § 11524 allows continuances for "good cause shown." It is agreeable to change the standard to the exact phrase "for good cause shown" to conform with Government Code §11524.

(e) Specifically, as to **§ 2655.6**, which shortens the time in which insurers must produce their prepared direct testimony by 10 business days and lengthens the time for the Department and interveners by 5 business days, the commentator feels that this is an unfair burden on insurers, and an advantage to the Department and interveners.

Response: The time frames were changed to ensure that motions to strike the insurers' witnesses' direct testimony could be opposed, heard, and ruled upon prior to the filing of the Department's and interveners' direct testimony. This would ultimately save effort by all parties. To the extent that discovery is not complete, the insurer could move for a continuance of the hearing date -- that would be "good cause" to continue the hearing and delay the date for filing of prepared testimony.

(f) Specifically, as to **§ 2659(a)**, which provides that "the proposed decision will be adopted if the Commissioner does not act within 100 days," the commentator believes that this seems to conflict with Insurance Code § 1861.05(d)(3), which indicates that an application will be deemed approved unless the Commissioner disapproves it prior to the expiration of 100 days after the case is submitted.

Response: The proposed regulation could result in disapproval occurring MORE than "100 days after the case is submitted" which is now prohibited by § 1861.05(c)(3). This 100 day requirement was not originally part of Prop. 103, rather it was an amendment passed into law in 1992 (AB 2875). Further complicating the picture is that AB 2875's amendment to § 1861.05(c)(3)

could be found by a court to be invalid because it does not "further the purposes of Prop. 103" as evidenced by § 1861.08.

However, on further review, another problem with this proposed regulation, not identified by the written comments, has surfaced. This regulation allows adoption of the ALJ's proposed decision by inaction of the Commissioner. Arguably, this type of adoption was specifically prohibited by Ins. Code §1861.08's provision that decisions could only be made by the Commissioner under Gov't Code §11517 (b), (c) & (e) but not (d). This lettering of subdivisions is referencing the old version of Gov't Code §11517; (d) has been relettered to (c)(2) in the current version of § 11517. Subdivision (c)(2) allows the ALJ's PD to be adopted by inaction of the agency after 100 days. Thus, since (d) was specifically left out of Ins. Code § 1861.08, an ALJ's PD could not, under Prop. 103, be "adopt[ed] by [the] silence", i.e., inaction, of the Commissioner. (See Dimugno & Glad's annotation in the 2002 Desktop Edition of Insurance Law at p. 422, 2nd full paragraph.)

Based on the uncertainty regarding the consistency of the proposed regulation with Prop 103, it will be withdrawn.

(g) Specifically, as to **§ 2659(c)**, there is a typographical error in the second line; "rcord" should be "record."

Response: This non-substantive change will be not be made because the section is being withdrawn.